

## **Chapter 4**

### **Determination of Water Rights**

#### **73-4-1 Action for a general adjudication of water rights -- Requirements for state engineer to file -- Adjudication area divisions.**

- (1)
  - (a) Five or more, or a majority of, water users of a water source may submit a signed, verified petition to the state engineer requesting an investigation of the rights of all claimants to the water of the water source.
  - (b) Upon receipt of a petition described in Subsection (1)(a), the state engineer shall:
    - (i) investigate whether the facts and circumstances of the water source and its claimants justify a general determination of water rights; and
    - (ii) if justified, file an action in the district court for a general adjudication of water rights.
  - (c) In any suit involving water rights the court may order an investigation by the state engineer of all the water rights on the source or system involved, as provided in this chapter.
- (2)
  - (a) The executive director of the Department of Environmental Quality, with the concurrence of the governor, may request that the state engineer file in the district court an action to determine the various water rights in the stream, water source, or basin for an area within the exterior boundaries of the state for which any person or organization or the federal government is actively pursuing or processing a license application for a storage facility or transfer facility for high-level nuclear waste or greater than class C radioactive waste.
  - (b) Upon receipt of a request made under Subsection (2)(a), the state engineer shall file an action in the district court for a general adjudication of water rights.
  - (c) If a general adjudication is filed in the state district court regarding the area requested pursuant to Subsection (2)(a), the state engineer and the state attorney general shall join the United States as a party to the action.
- (3) When an action for a general adjudication of water rights for a certain area is filed in district court, the state engineer may divide the general adjudication area into divisions and subdivisions if the state engineer:
  - (a) fulfills the requirements of this chapter individually for each division or subdivision; and
  - (b) petitions the court to incorporate the decrees for all the divisions and subdivisions within a general adjudication area into a final decree for the entire general adjudication area.

Amended by Chapter 72, 2016 General Session

#### **73-4-2 Interstate streams.**

For the purpose of co-operating with the state engineers of adjoining states in the determination and administration of rights to interstate waters and for such other purposes as he may deem expedient, the state engineer, with the approval of the executive director and the governor, is authorized to initiate and to join in suits for the adjudication of such rights in the federal courts and in the courts of other states without requiring a petition of water users as provided by Section 73-4-1. The state engineer, with the approval of the executive director and the governor, may also commence, prosecute and defend suits to adjudicate interstate waters on behalf of this state or its citizens in the courts of other states, in federal courts, and in the Supreme Court of the United States.

Amended by Chapter 198, 1969 General Session

**73-4-3 Notice and procedure for general adjudication of water rights -- Statements of claim -- Incomplete records.**

- (1) Upon the filing of any action by the state engineer as provided in Section 73-4-1, or by any person claiming the right to use the waters of any river system, lake, underground water basin, or other natural source of supply that involves a determination of the rights to the major part of the water of the source of supply or the rights of 10 or more of the claimants of the source of supply, the clerk of the district court shall notify the state engineer that a suit has been filed.
- (2)
  - (a) The state engineer then shall, for each general adjudication area, division, or subdivision, give notice of commencement of action to the claimants by publishing notice:
    - (i) once a week for two consecutive weeks in a newspaper designated by the court as most likely to give notice to such claimants; and
    - (ii) in accordance with Section 45-1-101 for two weeks.
  - (b) The notice of commencement of action shall state:
    - (i) an action has been filed;
    - (ii) the name of the action;
    - (iii) the name and location of the court in which the action is pending; and
    - (iv) the name or description of the water source involved.
  - (c) The state engineer shall file proof of the publication of notice of commencement of action with the district court.
- (3) The state engineer shall, for each general adjudication area, division, or subdivision, search the records of the state engineer's office to identify all possible claimants, and continue to update the records during the adjudication and search for additional claimants.
- (4) In accordance with Section 73-4-4, the state engineer shall serve a summons to each claimant of record in the state engineer's office within a general adjudication area, division, or subdivision.
- (5)
  - (a) After serving summons to a claimant, the state engineer shall give notice of further proceedings to:
    - (i) the claimant; and
    - (ii) an attorney who enters an appearance in court for the claimant.
  - (b) A court order is not required as a prerequisite for giving notice under Subsection (5)(a).
  - (c) The state engineer shall give the notice described in Subsection (5)(a):
    - (i) electronically, if the state engineer can verify the claimant's receipt;
    - (ii) by mail;
    - (iii) by personal service; or
    - (iv) if the notice is for the benefit of the claimants generally, by publishing the notice.
  - (d) Notice given by mail is complete when the notice is mailed.
- (6) Except as provided in Subsection (8)(d)(ii), if the state engineer serves a notice required by this chapter, the state engineer shall, before the day on which the final decree for the general adjudication area, division, or subdivision is filed, file with the district court a certificate of service that contains the name and address of the claimant served with the notice.
- (7) After publishing notice of commencement of an action, the state engineer shall hold a public meeting in the general adjudication area, division, or subdivision to inform a water right claimant of the general adjudication process.
- (8)

- (a) After the public meeting described in Subsection (7), the state engineer shall give notice to each claimant, in accordance with Subsection (5), of the time for filing statements of claim.
- (b) The notice described in Subsection (8)(a) shall include:
  - (i) a statement that:
    - (A) a claimant who desires to claim a water right in the action shall, in accordance with Section 73-4-5, submit a written or electronic statement of claim within 90 days after the day on which the notice is issued; and
    - (B) failure to file a timely statement of claim, as described in Section 73-4-5, constitutes a default and a judgment may be entered declaring that the claimant has no right to the use of water not claimed; and
  - (ii) instructions describing how to obtain or access a statement of claim form that the claimant must complete in order to comply with the provisions of Section 73-4-5.
- (c) A claimant served with the notice described in Subsection (8)(a) who desires to claim a water right in the action shall file a written or electronic statement of claim in accordance with Section 73-4-5.
- (d)
  - (i) The state engineer shall compile the statements of claim described in Subsection (8)(c), together with any extensions of time granted by the state engineer as provided by Section 73-4-10, and file them with the district court contemporaneously with the list of unclaimed rights of record, as described in Section 73-4-9.5.
  - (ii) If the state engineer files a claimant's statement of claim with the district court in accordance with Subsection (8)(d)(i), the state engineer is not required to file a certificate of service that relates to the notice described in Subsection (8)(a) for that claimant.
- (9) The state engineer shall examine the records of the state engineer's office with respect to the water source involved, and if the records are incomplete, make further investigation as may be necessary to identify potential claimants as required by this section.
- (10) In all such cases the court shall proceed to determine the water rights involved in the manner provided by this chapter, and not otherwise.

Amended by Chapter 72, 2016 General Session

**73-4-4 Summons for general adjudication of water rights -- Requirements to serve summons individually and generally -- Statement of claim requirement.**

- (1)
  - (a) The state engineer shall, by mail, serve a summons to a claimant of record in the state engineer's office within a general adjudication area, division, or subdivision.
  - (b)
    - (i) The state engineer may serve, by publication, a general summons to claimants in a general adjudication area, division, or subdivision, who are not of record in the state engineer's office, if the state engineer files an affidavit with the district court, verifying that the state engineer has, in accordance with Section 73-4-3, searched the records of the state engineer's office for claimants in the general adjudication area, division, or subdivision.
    - (ii) The state engineer shall publish, in accordance with the Utah Rules of Civil Procedure, a general summons described in Subsection (1)(b)(i):
      - (A) once a week for five successive weeks in one or more newspapers, determined by the judge of the district court as most likely to give notice to the claimants served; and
      - (B) for five weeks, in accordance with Section 45-1-101.
    - (iii) Service of a general summons is completed upon the last required date of publication.

- (c) The summons shall be substantially in the following form: "In the District Court of ..... County, State of Utah, in the matter of the general adjudication of water rights in the described water source.

### SUMMONS

The State of Utah to the said defendant:

You are hereby summoned to appear and defend the above entitled action which is brought for the purpose of making a general determination of the water rights of the described water source. Upon the service of this summons upon you, you will thereafter be subject to the jurisdiction of the entitled court and it shall be your duty to follow further proceedings in the above entitled action and to protect your rights therein. The state engineer will give a further notice sent to your last-known address, that you must file a statement of claim in this action setting forth the nature of your claim, and said notice will specify the date upon which your statement of claim is due and thereafter you must file said claim within the time set and your failure so to do will constitute a default in the premises and a judgment may be entered against you declaring that you have no right to the use of water not claimed."

- (2) If the state engineer is required, under this section, to serve a summons on the United States, the state engineer shall serve the summons in accordance with federal law.

Amended by Chapter 72, 2016 General Session

### **73-4-5 Requirements for statement of claim in general adjudication of water rights.**

- (1) Except as provided in Subsection (2), each person claiming a right to use water of a river system or water source shall, within 90 days after the day on which notice of the time to file statements of claim as described in Section 73-4-3 is served, file with the state engineer or the district court a written or electronic statement of claim, signed, and verified under oath, by the claimant, or by unsworn declaration as described in Section 78B-5-705, that includes:
- (a) the name and address of the claimant;
  - (b) the nature and measure of beneficial use on which the claim is based;
  - (c) the maximum flow of water used in cubic feet per second, the maximum volume of water used in acre-feet, or the quantity of water stored in acre-feet, as applicable;
  - (d) the period of time during which the water is used each year;
  - (e) the period of time during which the water is stored each year, if applicable;
  - (f) the name of the stream or other source from which the water is diverted, the point on the stream or source where the water is diverted, and a description of the nature of the diverting works;
  - (g) the water right number associated with the claimed right or, if not of record in the state engineer's office, evidence sufficient to enable the state engineer to evaluate the basis of the claimed right, including the information listed in Subsections 73-5-13(2)(a) and (c);
  - (h) the claimed priority date;
  - (i) the place and manner of current use; and
  - (j) other facts that clearly define the extent, limits, and nature of the claim, or that are required by the written or electronic form provided by the state engineer with the notice of the time to file statements of claim.
- (2) A person claiming a right to the use of water, as described in Subsection (1):
- (a) may request an extension of time as described in Section 73-4-10; and
  - (b) shall file the statement described in Subsection (1) on or before the granted extension date, if an extension is granted pursuant to Section 73-4-10.

Amended by Chapter 72, 2016 General Session

**73-4-9 Failure to file a statement of claim.**

- (1) The filing of each statement of claim shall be considered notice to all persons of the claim of the party making the same, and failing to make and deliver such statement of claim to the state engineer or the district court within the time prescribed by Section 73-4-5, or as extended pursuant to Section 73-4-10, shall be considered evidence of an intent to abandon the right.
- (2) If a claimant fails to timely file a statement of claim, as provided in this chapter, for a right not of record in the state engineer's office, the claimant is forever barred and estopped from subsequently asserting the unclaimed right.

Amended by Chapter 72, 2016 General Session

**73-4-9.5 List of unclaimed rights of record.**

- (1) After the last day on which a claimant may file a statement of claim in accordance with Section 73-4-5, the state engineer shall:
  - (a) file with the court a list of unclaimed rights of record listing each water right of record in the state engineer's office for which a statement of claim was not timely filed, that includes:
    - (i) the water right number;
    - (ii) the point of diversion; and
    - (iii) the owner of the water right as recognized in the state engineer's records;
  - (b) serve notice of the list of unclaimed rights of record on all identified potential claimants that were served with a summons, in the same manner as provided in Subsection 73-4-11(1)(c); and
  - (c) hold a public meeting in the area covered by the division or subdivision to explain the list of unclaimed rights of record.
- (2) A claimant who desires to object to the state engineer's list of unclaimed rights of record shall, within 90 days of the day on which the state engineer served the potential claimant notice of the list of unclaimed rights of record, file:
  - (a) a written objection to the list of unclaimed rights of record with the district court; and
  - (b) a statement of claim, as provided in this chapter, with the district court and the state engineer.
- (3) The state engineer shall evaluate and make a recommendation in the proposed determination for a water right placed on the list of unclaimed rights of record if:
  - (a) the claimant files a timely objection to the list of unclaimed rights in accordance with Subsection (2); and
  - (b) the court determines that a claimant's failure to file a timely statement of claim is excused by:
    - (i) circumstances beyond the claimant's control;
    - (ii) mistake; or
    - (iii) any other reason justifying relief.
- (4) If a claimant fails to file a timely statement of claim, as provided in this chapter, for a right of record in the state engineer's office and the failure to file a timely claim is not excused by the court as provided in Subsection (3), the claimant is forever barred and estopped from asserting the right to the use of water included in the list and the right shall be considered abandoned.
- (5) After resolving all objections to the list of unclaimed rights of record, the court shall render a judgment for the list of unclaimed rights of record that:
  - (a) identifies any water rights on the list of unclaimed rights that are not abandoned because the court excuses the failure to file a statement of claim as provided in Subsection (3);
  - (b) adjudges the unclaimed rights abandoned; and

- (c) may prohibit future claims from being filed for rights not of record in the state engineer's office, under this chapter and Section 73-5-13, in the general adjudication area, division, or subdivision.

Enacted by Chapter 72, 2016 General Session

**73-4-10 Amendment of pleadings -- Extensions of time.**

- (1) The court shall have power to allow amendments to any petition, statement of claim, or pleading and to extend, upon due cause shown, the time for filing any other pleading, statement of claim, report, or objection.
- (2) If the claimant files a written request for an extension of time to file a statement of claim within the 90-day period to file a statement of claim, the state engineer shall grant one 30-day extension, in writing.

Amended by Chapter 72, 2016 General Session

**73-4-11 Proposed determination by engineer to court -- Hydrographic survey map -- Notice -- Public meeting.**

- (1) After full consideration of the statements of claims, records, and files, and after an examination of the river system or water source involved, the state engineer shall for the general adjudication area, division, or subdivision:
  - (a) complete a hydrographic survey map;
  - (b) prepare a proposed determination of all rights to the use of the water and file it with the district court;
  - (c) serve notice of completion of the proposed determination by publication and by mail, in accordance with Subsection 73-4-3(5), to each claimant of record in the state engineer's office within the general adjudication area, division, or subdivision, that includes:
    - (i)
      - (A) a copy of the proposed determination; or
      - (B) instructions on how to obtain or access an electronic copy of the proposed determination; and
    - (ii) a statement describing the claimant's right to file an objection to the proposed determination within 90 days after the day on which the notice of completion of the proposed determination is served; and
  - (d) hold a public meeting in the area, division, or subdivision covered by the proposed determination to explain the proposed determination to the claimants.
- (2) A claimant who desires to object to the state engineer's proposed determination shall, within 90 days after the day on which the state engineer served the claimant with notice of completion of the proposed determination, file a written objection to the proposed determination with the district court.
- (3) The state engineer shall distribute the waters from the natural streams or other natural sources:
  - (a) in accordance with the proposed determination or modification to the proposed determination by court order until a final decree is rendered by the court; or
  - (b) if the right to the use of the waters has been decreed or adjudicated, in accordance with the decree until the decree is reversed, modified, vacated, or otherwise legally set aside.

Amended by Chapter 72, 2016 General Session

#### **73-4-12 Judgment -- In absence of contest.**

If no contest on the part of any claimant shall have been filed, the court shall render a judgment in accordance with such proposed determination, which shall:

- (1) determine and establish the rights to the use of the water of said river system or water source; and
- (2) set forth:
  - (a) the name of the person entitled to the use of the water;
  - (b) the quantity of water in acre-feet or the flow of water in second-feet;
  - (c) the time during which the water is to be used each year;
  - (d) the name of the stream or other source from which the water is diverted;
  - (e) the point on the stream or other source where the water is diverted;
  - (f) the priority date of the right; and
  - (g) any other matters as will fully and completely define the rights of said claimants to the use of the water.

Amended by Chapter 72, 2016 General Session

#### **73-4-13 In case of contest -- Notice of hearing.**

If any contest or objection on the part of any claimant shall have been filed, as in this chapter provided, the court shall give not less than 15 days' notice to all claimants, stating when and where the matter will be heard.

No Change Since 1953

#### **73-4-14 Pleadings -- Expert assistance for court.**

- (1) The statements of claim shall stand in the place of pleadings, and issues may be made thereon.
- (2) Whenever requested so to do the state engineer shall furnish the court with any information which the state engineer may possess, or copies of any of the records of the state engineer's office which relate to the water of said river system or water source.
- (3) The court may appoint referees, masters, engineers, soil specialists, or other persons.
- (4) In all proceedings for the determination of the rights of claimants to the water of a river system or water source, the filed statements of claim shall be competent evidence of the facts stated therein unless the same are put in issue.

Amended by Chapter 72, 2016 General Session

#### **73-4-15 Judgment after hearing.**

Upon the completion of the hearing, after objections filed, the court shall enter judgment that shall determine and establish the rights to the use of the water of the river system or water source as provided in Section 73-4-12.

Amended by Chapter 72, 2016 General Session

#### **73-4-16 Appeals.**

- (1) There shall be a right of appeal from a final judgment of the district court to the Supreme Court as provided in Section 78A-3-102.

- (2) The appeal shall be upon the record made in the district court, and may as in equity cases be on questions of both law and fact.

Amended by Chapter 72, 2016 General Session

**73-4-17 Certified copy of final judgment -- Filing.**

Within 30 days after the entry of final judgment of the district court, or if an appeal is taken from a district court judgment, within 30 days after the final judgment on remittitur is entered, it shall be the duty of the clerk of the district court to deliver to the state engineer a certified copy of such judgment and to cause a certified copy thereof to be filed with the county recorder of each county in which the water adjudicated is diverted from its natural source and of each county where the water is applied. No filing fee shall be charged by either the state engineer or the county recorder.

Amended by Chapter 127, 1992 General Session

**73-4-18 General determination in court's discretion -- State to be made a party.**

Whenever any civil action is commenced in the district court involving fewer than 10 water claimants or less than the major part of the rights to the use of water from any river system, lake, underground water basin, or other source, the court in its discretion may, if a general determination of the rights to the use of water from said water source has not already been made, proceed, as in this chapter provided, to make such a general determination. In any such action for the determination of water rights the state of Utah shall be joined as a necessary party.

No Change Since 1953

**73-4-19 Redetermination -- Bond of applicant.**

Wherever a general determination of water rights upon any river system or water source has been made by the district court, any claimant to the use of water from such river system or water source seeking a redetermination of water rights upon such river system or water source shall, before commencing any action for such redetermination or for the revision of any final judgment other than as provided in Section 73-4-1, furnish to the court in which such action is commenced and before the filing of any petition or complaint for such purpose, a good and sufficient bond, in a form and with sureties approved by the court, in a sum fixed by the court at least equal to twice the estimated costs which may arise in such action, conditioned that if final judgment after hearing, or after appeal should appeal be taken, is awarded against such claimant, then such claimant will pay all costs arising in such action and all damages to other parties thereto arising therefrom.

No Change Since 1953

**73-4-20 Revolving fund -- Money expended not assessable against water users -- Transfer of unexpended money to adjudication fund -- Payment of costs of determinations -- Money expended from adjudication fund not assessable against water users -- Surplus to remain in adjudication fund.**

Money heretofore expended from the state engineer's revolving fund in pending adjudications shall not be assessable against the water users. All money remaining and unexpended in the state engineer's revolving fund as of July 1, 1953, including money appropriated to the revolving fund for the biennium ending June 30, 1955, shall be transferred to a fund of the state engineer to be known as the adjudication fund. The revolving fund shall be closed out upon such transfer



of money. The state engineer shall pay all costs of determinations with money appropriated to the office of the state engineer and deposited in the adjudication fund and with money transferred to such fund as provided above. The money expended from such fund shall not be assessable against the water users. Any money remaining in such fund at the end of the biennium shall not revert to the general fund but shall remain in the adjudication fund until expended.

Amended by Chapter 131, 1953 Special Session C

**73-4-21 Duty to update address and ownership -- Duty to follow court proceedings -- Additional notice.**

- (1) After the service of summons in the manner prescribed by Section 73-4-4, it shall be the duty of every person served individually or by publication to:
  - (a) record any change in address or water right ownership with the state engineer; and
  - (b) follow all court proceedings.
- (2) Except as provided in Subsection (3), the state engineer is not required to provide any further or additional notice except the notice:
  - (a) that the statement of claim is due as prescribed by Section 73-4-3;
  - (b) of the list of unclaimed rights of record, as described in Section 73-4-9.5; and
  - (c) of the proposed determinations as provided by Section 73-4-11.
- (3) The district court may require notice of other proceedings to be given when, in the judgment of the court, it considers notice necessary.

Amended by Chapter 72, 2016 General Session

**73-4-22 State engineer's duty to search records for and serve summons on claimants -- Filing of affidavit -- Publication of summons -- Binding on unknown claimants.**

- (1) The state engineer, throughout the pendency of proceedings, shall serve summons in the manner prescribed by Section 73-4-4 upon all claimants to the use of water in the described source embraced by said action, whenever the names and addresses of said persons come to the attention of the state engineer.
- (2) Immediately after the notice of the proposed determination is given, in accordance with Section 73-4-11 hereof, the state engineer shall diligently search for the names and addresses of any claimants to water in the source covered by the proposed determination who have not been previously served with summons other than by publication, and any such persons located shall forthwith be served with summons.
- (3) After the state engineer has exhausted the search for other claimants, as described in Subsection (2), the state engineer shall:
  - (a) make such fact known to the district court by affidavit; and
  - (b) as ordered by the court, again publish summons five times, once each week, for five successive weeks which said service shall be binding upon all unknown claimants.

Amended by Chapter 72, 2016 General Session

**73-4-23 Effective date of amendatory act -- Application to pending suits -- State engineer's certificate.**

This act shall be effective 60 days from its enactment and shall apply to all suits now pending under Title 73, Chapter 4, Determination of Water Rights, Utah Code Annotated 1953, except those proceedings under which the state engineer has by the effective date hereof completed

his survey, and it is expressly provided that those actions where the state engineer has by the effective date of this act completed his survey may proceed to completion under the procedure prescribed by the statutes heretofore existing. The state engineer shall within 10 days after the effective date of this act file with the clerk of the court in each action then pending under Title 73, Chapter 4, Determination of Water Rights, Utah Code Annotated 1953, a certificate under the seal of his office stating whether or not he has completed the survey so that all persons will have notice and can know whether or not this act is applicable to such existing suit.

No Change Since 1953

**73-4-24 Petition for expedited hearing of objection -- Petition for limited determination.**

- (1) A claimant to the use of water may petition the court to expedite the hearing of a valid, timely objection to a report and proposed determination prepared in accordance with Section 73-4-11 in which the claimant has a direct interest.
- (2) A petition under Subsection (1) shall identify any party directly affected by the objection, if known to the claimant, and state why the hearing of the objection should be expedited.
- (3) A petitioner under Subsection (1) shall notify those affected by the petition as directed by the court.
- (4) The court may grant a petition under Subsection (1) if:
  - (a) the court finds that the expedited hearing is necessary in the interest of justice;
  - (b) granting the petition will facilitate a reasonably prompt resolution of the matters raised in the objection; and
  - (c) granting the petition does not prejudice the right of another claimant.
- (5) During the pendency of a general adjudication suit, a claimant or group of claimants may petition the court to direct the state engineer to prepare a proposed determination and hydrographic survey map for a limited area within the general adjudication area in which the claimant or group of claimants has a claim.
- (6) The court may grant a petition under Subsection (5) if:
  - (a) the claimant or group of claimants will suffer prejudice if the petition is not granted;
  - (b) the matters raised by the claimant or group of claimants are proper for determination in a general adjudication;
  - (c) granting the petition will not unduly burden the state engineer's resources; and
  - (d) granting the petition will not unduly interfere with the state engineer's discretion to allocate resources for the preparation of another proposed determination.
- (7) If the court grants a petition under this section, the state engineer shall comply with this chapter in satisfying the court's order.

Amended by Chapter 72, 2016 General Session